

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

April 15, 2004

A meeting of the Board of Environmental Protection was held on Thursday, April 15, 2004, at the Holiday Inn / Ground Round in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 10:00 a.m. with the following individuals present:

Board: Ernest Hilton, Irving Faunce, Nancy Anderson, Katharine Littlefield, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler, and Matt Scott.

Absent: Board member Irving Faunce departed at approximately 11:20 a.m.

Note: There is one vacancy.

Staff: Bureau of Air Quality
Bureau of Air Quality

Jeffrey S. Crawford
Tom Downs

Others: David P. Littell, Deputy Commissioner
Jan McClintock, Assistant Attorney General
Cynthia Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Deputy Commissioner David Littell reported the following:

Deputy Commissioner Littell reported that he will step down from the table as the Board considers the rulemaking initiatives.

Lincoln Pulp & Paper / Eastern Fine Paper: Positive progress has been made. There is a potential buyer for the Lincoln mill. The Department continues to oversee the environmental safety of both properties. The warmer weather has allowed the Department to move the Brewer mill from warm to cold status, saving on energy costs. Additionally, the Department has consolidated and removed significant amounts of chemicals at each of the sites.

West Old Town Landfill: The Commissioner signed an order approving the application of the West Old Town Landfill on Friday. If Board members have questions regarding the order, they will be provided to the Commissioner for a response.

Legislature: The Legislature has not taken action on the environmental bond.

Important legislation that has been passed by the committee and is expected to be approved by the Legislature includes: 1) the ban on brominated flame retardants, and 2) controls on the discharge of wastewater from passenger vessels. Maine is one of two states in the nation to enact a ban on certain brominated compounds used in flame retardant household and auto products. Studies on these compounds identified health concerns including the presence of these compounds in breast milk and possible adverse impacts on human development. The ban is the first of its kind in the nation. Lastly, the vessel discharge bill is expected to pass, making Maine the second state to address discharges from this pollutant source along its coast.

Questions:

Board member Matt Scott asked about the status of the proposed AA classifications for certain Atlantic Salmon rivers.

Deputy Commissioner Littell advised that the bill dealing with the river classifications passed following discussion of concerns expressed by the blueberry industry.

Board member Nancy Ziegler asked about the status of the bill sponsored by Rep. Twomey regarding the West Old Town Landfill.

The Deputy Commissioner advised that the public hearing bill was withdrawn. Additionally, as a result of this proposed bill, Commissioner Gallagher hosted a third public session to receive testimony under oath from members of the public.

Board member Katharine Littlefield asked who was keeping the Lincoln and Brewer mills warm.

As a result of the State's opposition to the order for abandonment and its concern about the potential hazard to public health as a result of a discharge to the ground, waters, or air of the state, the State of Maine paid to keep the mills warm until they were safely transitioned to cold stasis.

Board member Littlefield asked why the state does not require paper companies to have funds available to maintain facilities for proper shut-down.

Mr. Littell responded that members of the Legislature have asked the same question. The Department has been directed to examine this issue and report back with a recommendation for future consideration; the major issue being limited liability.

Board member Jean Wilkinson inquired about the Department's costs associated with keeping the mills warm.

Governor Baldacci authorized use of the balance of \$200,000 from a contingency fund. The Department transferred \$50,000 from its hazardous waste fund – these funds were exhausted within the first week. The creditors had been keeping the mills in a warm stasis at a cost of approximately \$400,000 per week. The Department, and in particular the response division (David Sait, Barbara Parker and Tom Varney,) was able to reduce the weekly expense of heating the mills significantly, allowing the Department to use existing bond monies to keep the mills warm until spring, when they could be safely transitioned to a cold status. The bond funds used were previously planned to remediate 17 uncontrolled hazardous sites. The Department is seeking an amendment to the bond package to replace those used bond funds.

Board member Ziegler asked if the bond request would be subject to voter approval in November

If the Legislature approves the amended bond package, it would go out to vote. Given other budget issues, some legislators are not in favor of a large bond package.

Board member Wardwell asked if the current potential buyer was planning to purchase both the Lincoln and the Brewer mills.

The current buyer is interested primarily in the Lincoln mill. The offer will initially include the Brewer mill, but it may be taken off the table. The City may be interested in acquiring the Brewer mill.

B. CHAIRMAN'S COMMENTS:

IFW Boat Ramp: A pre-hearing conference was held on April 14th to discuss the schedule for the Board's consideration of IFW's application for a public boat ramp at Mere Point in Brunswick. The hearing is likely to be conducted in late fall 2004 or early winter 2005. IFW needs time to respond to an informational request by the Department that requires field-work during the summer months. Additionally, the parties have submitted briefs on the question of title, right or interest (TRI). The Chair has ruled in the Fifth Procedural Order that IFW has demonstrated sufficient TRI for the Board to proceed with its consideration of this application. As of this morning, this ruling has been appealed to the full Board.

C. EXECUTIVE ANALYST COMMENTS:

IFW Boat Ramp: The project has been delayed to allow for collection of additional data, including that pertaining to eel grass, during the growing season.

Hannum: The Board's draft order upholding the earlier decision is available for review. If Board members want to review the draft order please contact the Executive Analyst. Consideration of the draft order is tentatively scheduled for June 3, 2004.

West Old Town Landfill: The Executive Analyst noted that both Mr. Hilton and Ms Plummer had volunteered to take on the additional work load of presiding officer in the event the license for the West Old Town Landfill is appealed to the Board. After discussing the duties of the Presiding Officer with one another and the Executive Analyst, Mr. Hilton deferred to Ms. Plummer. The Executive Analyst asked that the Board endorse Ms. Plummer as Presiding Officer for this matter. The Board voted (7-0-2-0) on a motion to appoint Virginia Plummer as the Presiding Officer regarding any appeal of the Commissioner's decision on the West Old Town Landfill application.

Board members Ernest Hilton, Nancy Anderson, Irving Faunce, Katharine Littlefield, Jean T. Wilkinson, Nancy Ziegler and Matt Scott voted to support the motion. Board members Virginia Plummer and Richard Wardwell recused.

New Board Member: Donald Guimond, town manager town of Fort Kent, will be joining us on May 6th.

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| D. BOARD CALENDAR: | Reviewed |
| E. DEPARTMENTAL ORDERS: | Reviewed |
| F. EXECUTIVE SESSION: | None |

II CONSENT AGENDA ITEMS

The Board voted (8-0-0-1) on a motion to approve as presented items 1, 2, 3, 4 and 5.

Board members Ernest Hilton, Nancy Anderson, Katharine Littlefield, Irving Faunce, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Virginia Plummer, voted to support the motion. Board member Matt Scott was absent.

1. MARCOR REMEDIATION, INC., Kittery - Administrative Consent Agreement (BRWM)
2. MCGEE PROPERTIES, LLC, Winthrop - Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
3. MERL “SAM” DUNHAM, INC., Dexter – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
4. TERRY ARMSTRONG, Northport – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. TOWN OF GREENVILLE, Greenville – Administrative Consent Agreement (BLWQ – Land)

III. Regular Agenda

1. CHAPTER 130, SOLVENT CLEANERS / REPEAL AND REPLACE (post to hearing)
Staff: Donald Anderson, Bureau of Air Quality

The Board voted (8-1-0-0) on a motion to post to public hearing on May 20, 2004 the repeal and replacement of Chapter 130, Solvent Cleaner as presented and established June 1, 2004 as the deadline for written public comment. The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 585 and 585-A.

Board members Ernest Hilton, Irving Faunce, Katharine Littlefield, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Matt Scott voted to support the motion. Board member Nancy Anderson voted to oppose the motion.

INFORMATIONAL SESSION:

Overview – Bureau of Air Quality (continued from BEP meeting of 2/5/04)

Staff: Tom Downs, Ron Severance, Jeff Crawford, Bureau of Air Quality

BOARD RECONVENED TO CONDUCT A PUBLIC HEARING @ 1:30 IN THE MATTER OF:

Chapter 100 Definitions and Chapter 137 Emission Statements / Amendment